

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



**V**

**BARRINGTON VILLAGE SCHOOL**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid earned time

**Date of Hearing:** June 1, 2015

**Case No.** 50051

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on March 16, 2015. The notice was sent to the employer and there was no written objection. The Notice of Hearing was sent to both parties on May 11, 2015. The employer did show up for the hearing.

The claimant testified that she worked for the employer for six years. There was an employee handbook in place and any earned time was placed on the books on January 1. The claimant further testified that at the end of December she had 80 hours on the books. In the next reporting period that amount was reduced to 32 hours. The claimant said that she left the employ of the company and expected to be paid for the 80 hours. The Wage Claim was for \$1,120.00.

The claimant also testified that the handbook did not address the payout of leave and she did not have any knowledge of other former employees being paid this accrued time.

The employer testified that there has never been a practice of paying out unused earned time at the end of an employee's tenure with the company. The employer also provided a statement from a former employee that the time was never paid to her at her separation from service and that she was in a position to know that it was not paid out to anyone else.

**FINDINGS OF FACT**

RSA 275:43 I Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee:

- (a) In lawful money of the United States;
- (b) By electronic fund transfer;
- (c) By direct deposit with written authorization of the employee to banks of the employee's choice;
- (d) By a payroll card provided that the employer shall provide to the employee at least one free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or
- (e) With checks on a financial institution convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e), and further provided that all wages in the nature of health and welfare fund or pension fund contributions required pursuant to a health and welfare fund trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of employees and agreed to by the employer shall be paid by every such employer within 30 days of the date of demand for such payment, the payment to be made to the administrator or other designated official of the applicable health and welfare or pension trust fund.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

RSA 275:43 V Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

This part of the law places an issue such as earned time into the category of wages when the time is due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the Wage Claim is invalid. The claimant has the burden to show that there were wages due and owing and she did not meet this burden.

The employer provided credible testimony that there is no past practice for the payment of accrued leave upon separation from service. The printed rules do not address this situation yet the claimant did not bear her burden to show that the time was due to be paid.

The Wage Claim is invalid.

### **DECISION AND ORDER**

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:43 V considers vacation pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that she is due any vacation pay, it is hereby ruled that the Wage Claim is invalid.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: June 16, 2015

TFH/kdc